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Attorneys for Plaintiffs  
CORY SPENCER, DIANA MILENA  
REED, and COASTAL PROTECTION  
RANGERS, INC.

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

CORY SPENCER, an individual;  
DIANA MILENA REED, an  
individual; and COASTAL  
PROTECTION RANGERS, INC., a  
California non-profit public benefit  
corporation,

Plaintiffs,

CASE NO. 2:16-cv-02129-SJO (RAOx)

**[PROPOSED JOINT] STATEMENT  
REGARDING PLAINTIFFS MOTION  
TO COMPEL PRODUCTION OF  
DOCUMENTS DEFENDANT CHIEF  
KEPLEY**

[Filed Concurrently with: Notice of  
Motion; Declaration of Victor Otten]

1  
2 v.

3 LUNADA BAY BOYS; THE  
4 INDIVIDUAL MEMBERS OF THE  
5 LUNADA BAY BOYS, including but  
6 not limited to SANG LEE, BRANT  
7 BLAKEMAN, ALAN JOHNSTON,  
8 AKA JALIAN JOHNSTON,  
9 MICHAEL RAE PAPAYANS,  
10 ANGELO FERRARA, FRANK  
11 FERRARA, CHARLIE FERRARA,  
12 and N. F.; CITY OF PALOS VERDES  
13 ESTATES; CHIEF OF POLICE JEFF  
14 KEPLEY, in his representative  
15 capacity; and DOES 1-10,  
16  
17 Defendants.

Judge: Hon. Rozella A. Oliver  
Date: September 6, 2017  
Time: 10:00 am  
Crtrm.: F, 9<sup>th</sup> Floor\_\_\_\_

Complaint Filed: March 29, 2016  
Trial Date: November 7, 2017

14 As discussed at the July 26, 2016 hearing with the Hon. Rozella A. Oliver,  
15 Plaintiffs' submit this Motion to Compel Defendant Chief Kepley to provide Further  
16 Responses to Plaintiffs Request for Production of Documents, Set One.

17 **I. INTRODUCTION**

18 **A. Plaintiffs' Introductory Statement**

19 Early in this litigation, Plaintiffs' counsel sent letters to the attorneys for each  
20 of the Defendants requesting that they remind their clients not to alter, delete or  
21 destroy any evidence relating to this lawsuit.

22 Most of the thousands of documents eventually produced by Defendant Keply  
23 came late in the litigation, were duplicative and not responsive to Plaintiffs  
24 discovery request. The vast majority of documents were produced during the month  
25 July despite Defendant Keply's attorneys knowing that Plaintiffs Opposition to the  
26 Defendants City of Palos Verdes Estates and Chief Keplys Motion for Summary  
27 Judgement had to be filed on July 31, 2017. More than 11,000 documents were  
28

1 produced during that time frame. Moreover, thousands of documents were images  
2 that had to be converted to PDF to make them searchable. To date, there are still  
3 documents that have never been produced including phone records of the police  
4 officers which are important since deposition testimony has shown that several  
5 officers are friends with Bay Boys.

6 **B. Defendants Introductory Statement**

7 [Intentionally left blank for response]

8 **II. PLAINTIFFS STATEMENT OF FACTS**

9 On July 8, 2016, Plaintiffs' counsel sent a litigation hold letter to the attorney  
10 for The City of Palos Verdes Estates and Chief Kepley requesting that he remind his  
11 client not to alter, delete or destroy any evidence relating to the lawsuit. (Attached to  
12 the Decl. Otten as Exhibit 1)

13 On March 20, 2017, Defendant Kepley served Responses to Plaintiffs Request  
14 For Production of Documents, One. (Decl. Otten, Exhibit 2)

15 There were numerous meet and confers between the Plaintiffs and Defendant  
16 regarding the outstanding discovery issues. These included both written and oral  
17 communications. (Decl. Otten ¶4; Exhibit 3)

18 To date, Defendant Kepley has not fully complied with Plaintiff's discovery  
19 request.

20 **III. DEFENDANTS STATEMENT OF FACTS**

21 [Intentionally left blank for response]

22 **IV. DISPUTED DISCOVERY**

23 REQUEST FOR PRODUCTION NO. 12:

24 Any and all DOCUMENTS REFERRING or RELATED TO any individually-  
25 named Defendant.

26 Defendant's Response:

27 Objection. Defendant refers to and incorporates by reference the General  
28

1 Response and Objections as though set forth fully herein. Defendant further objects  
2 to this request to the extent it fails to set forth any applicable timeframe, thereby  
3 violating the proportionality standard set forth in Fed. R. Civ. P. 26(b). Defendant  
4 further objects to this request to the extent it seeks information protected by the  
5 attorney-client privilege and/or the attorney work-product doctrine. Defendant further  
6 objects to this request to the extent it is cumulative with prior document requests  
7 propounded in this litigation, rendering the request unduly burdensome and harassing.  
8 Defendant further objects to the prefatory definitions utilized in this request as vague,  
9 overbroad, and unduly burdensome. Defendant further objects to this request to the  
10 extent it calls for the disclosure of information subject to governmental law  
11 enforcement protocols prohibiting such disclosures to unauthorized personnel.  
12 Defendant further objects to this request as overbroad in view of the Court's denial of  
13 class certification; said denial substantially narrows the permissible discovery and  
14 proportionality considerations. Plaintiffs' action is now one brought individually by  
15 the three named party-plaintiffs, and proportionality considerations mandate that any  
16 discovery sought by Plaintiffs be limited to their specific, individualized claims and  
17 allegations. Subject to the foregoing objections, Defendant responds as follows.

18 Defendant undertook a diligent search and reasonable inquiry in an effort to  
19 locate the items requested. No responsive documents exist. Defendant's investigation  
20 and discovery efforts are continuing and have not been completed at this time.  
21 Defendant expressly reserves the right to supplement, amend, or otherwise modify  
22 this response on that basis.

23 Plaintiffs' Argument:

24 Defendant's response states that there are no responsive documents but after  
25 being threatened with a Motion to Compel, Defendant turned over Palos Verdes  
26 Estates Police Report DR 021007 which involved Defendant Sang Lee. That Incident  
27 Report states that the victim took photographs of the people he believed were  
28

1 throwing rocks at him. The Incident Report states that the Palos Verdes Police  
2 Department has possession of the photographs which have not been turned over to  
3 Plaintiffs.

4 There are likely other documents that have not been produced.

5 Defendants objections should be ruled as not applicable and Defendant should  
6 be ordered to produce the photographs associated with the Incident Report.

7 It is a common principle that the rules of discovery are to be broadly and  
8 liberally construed so as to permit the discovery of any information which is relevant  
9 and is reasonably calculated to lead to the discovery of admissible evidence. (See,  
10 Fed. R. Civ. P. 26(b)(2); Hickman v. Taylor, 329 U.S. 495, 507(1947). Rule 26 has  
11 been broadly construed to “encompass any matter that bears on, or that reasonably  
12 could lead to other matter that could bear on, any issue that is or may be in the case.”  
13 Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (citing Hickman, 329 U.S.  
14 495). Fed. R. Civ. P. 34(b)(1)(A), requires a request for production to describe an item  
15 “with reasonable particularity,” which this RFP does. Moreover, Defendant fails to  
16 specify why the request is “vague, ambiguous, overbroad.” Also, there is a protective  
17 order in place.

18 Defendants Argument:

19 [Intentionally left blank for response]

20 REQUEST FOR PRODUCTION NO. 14:

21 Any and all DOCUMENTS REFERENCING surfers who regularly surf at  
22 Lunada Bay.

23 Defendant’s Response:

24 Objection. Defendant refers to and incorporates by reference the General  
25 Response and Objections as though set forth fully herein. Defendant further objects  
26 to this request to the extent it fails to set forth any applicable timeframe, thereby  
27 violating the proportionality standard set forth in Fed. R. Civ. P. 26(b). Defendant  
28

1 further objects to this request to the extent it seeks information protected by the  
2 attorney-client privilege and/or the attorney work-product doctrine. Defendant further  
3 objects to the prefatory definitions utilized in this request as vague, overbroad, and  
4 unduly burdensome. Defendant further objects to the use of the term "regularly surf"  
5 as vague, ambiguous, and overbroad. Defendant further objects to this request as  
6 overbroad in view of the Court's denial of class certification; said denial substantially  
7 narrows the permissible discovery and proportionality considerations. Plaintiffs'  
8 action is now one brought individually by the three named party-plaintiffs, and  
9 proportionality considerations mandate that any discovery sought by Plaintiffs be  
10 limited to their specific, individualized claims and allegations. Subject to the  
11 foregoing. objections, Defendant responds as follows. Defendant undertook a diligent  
12 search and reasonable inquiry in an effort to locate the items requested. No responsive  
13 documents exist. Defendant's investigation and discovery efforts are continuing and  
14 have not been completed at this time. Defendant expressly reserves the right to  
15 supplement, amend, or otherwise modify this response on that basis.

16 Plaintiffs' Argument:

17 Defendant's response states that there are no responsive documents but after  
18 being threatened with a Motion to Compel, Defendant turned over a police  
19 Memorandum regarding the Lunada Bay Event-1/20/2014 bates numbers  
20 CITY023466- CITY023473. The Memorandum refers to three police video cameras  
21 recording the area, many individuals both on land and in the water had personal video  
22 recorders. When Plaintiffs requested the video, the City produced video from an event  
23 in 2012.

24 In addition, the Defendant only provided redacted Officer Report for Incident  
25 15-12058 which in CITY017541- CITY017545. The report states that the incident  
26 was video recorded and the Palos Verdes Police Department have the video.

27 Defendants objections should be ruled as not applicable and Defendant should  
28

1 be ordered to produce the photographs associated with the Incident Report

2 It is a common principle that the rules of discovery are to be broadly and  
3 liberally construed so as to permit the discovery of any information which is relevant  
4 and is reasonably calculated to lead to the discovery of admissible evidence. (See,  
5 Fed. R. Civ. P. 26(b)(2); Hickman v. Taylor, 329 U.S. 495, 507(1947). Rule 26 has  
6 been broadly construed to “encompass any matter that bears on, or that reasonably  
7 could lead to other matter that could bear on, any issue that is or may be in the case.”  
8 Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (citing Hickman, 329 U.S.  
9 495). Fed. R. Civ. P. 34(b)(1)(A), requires a request for production to describe an item  
10 “with reasonable particularity,” which this RFP does. Moreover, Defendant fails to  
11 specify why the request is “vague, ambiguous, overbroad.”

12 Defendants Argument:

13 [Intentionally left blank for response]

14 **V. PLAINTIFFS REQUESTS**

15 Plaintiffs are requesting that Defendant Chief Kepley be ordered to produce all  
16 the documents that have not been turned over and any objections and/or privileges are  
17 not applicable.

18 DATED: August 7, 2017

OTTEN LAW PC

19 By: /s/ Victor Otten

20 VICTOR OTTEN

21 Attorneys for Plaintiffs